

IN THE HIGH COURT OF BOMBAY AT GOA***(LD-VC-CW-8-2020)******AND******(LD-VC-OCW-13-2020)***

1. Cedric A. Vaz,
major of age,
Indian,
resident of 5th Floor,
Edcon Incrocio,
M.G. Road, Panaji Goa,
2. Kenneth Anthony Vaz,
minor of age, Indian,
resident of 5th Floor,
Edcon Incrocio,
M. G. Road, Panaji
Goa, (represented by
his father and natural guardian,
Petitioner No.1.

....

Petitioners

Versus

1. State of Goa,
Through Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez Goa.
2. Secretary (Education)
Government of Goa,
Secretariat, Porvorim,
Bardez Goa.
3. Directorate of Education,
Government of Goa,
Through its Director,
Porvorim Bardez Goa.
4. Goa Board of Secondary and
Higher Secondary Education,
through Chairman/Secretary,
Alto Betim, Porvorim Bardez Goa.
5. Union of India,
through Home Secretary,

Ministry of Home Affairs,
Government of India,
North Block, New Delhi 110001. ... Respondents

Mr. Ryan Menezes, Mr. Nigel Fernandes and Ms. Gina Almeida, Advocates for the Petitioners.

Mr. D. Pangam, Advocate General with Ms. M. Correia, Addl. Government Advocate for the Respondents.

Mr. P. Faldessai, Additional Solicitor General of India for Union of India.

WITH

(LD-VC-CW-17-2020)

AND

(LD-VC-OCW-15-2020)

1. Dr. Adwait R. Desai,
major of age, r/o near
15, Matruchhaya Road,
Near Wamaneshwar Temple,
Dhavlim Post Kavlem, Ponda,
Goa. 403401.
2. VYOM ADWAIT DESAI,
minor of age, r/o near 15,
Matruchhaya Road, Near
Wamaneshwar Temple, Dhavlim,
Post Kavlem, Ponda, Goa.
(through his father the Petitioner No.1).
3. NIKHIL SADHALE, major of age,
r/o near Satyanarayan Temple,
Dhawali, Ponda, Goa.
4. SLOK SADHALE, major of age,
r/o near Satyanarayan Temple,
Dhawali, Ponda, Goa.
(through his father the Petitioner No.3).
5. SHAILENDRA SHIRKE, major of age,
resident of Panditwada, Ponda, Goa,
Dhawali, Ponda, Goa.
6. RAMKRISHNA SHINKRE,
minor of age, resident of Panditwada,
Ponda, Goa.
Dhavli, Ponda, Goa.

(through his father the Petitioner No.5).

7. NAHIDA BI KHAN

major of age, resident of Jameela Mansion,
Opp. Madhuban Complex, St. Inez,
Panaji, Goa.

8. MOHAMMED FARIZ SHAIKH,

minor of age, student, r/o Jameela Mansion,
Opp. Madhuban Complex, St. Inez,
Panaji, Goa. (Through his mother Petitioner No.7).

9, SHIRLEY FERNANDES, major of age,
r/o E-3/B-1. Dineshnagar, Ela, Old Goa, Goa.

10. REUBEN FERNANDES, minor of age,
r/o E-3/B-1, Dineshnagar, Ela, Old Goa,
Goa. (through his mother, Petitioner No.9).

11. DRINA I. PEREIRA SEQUEIRA,

major of age, r/o Flat No. BG1,
Shelters Enclave, Odlem Bhatt,
Taleigao, Goa.

12. SENIFA M. MATOS SEQUEIRA,

minor of age, r/o Flat No. BG1,
Shelters Enclave, Odlem Bhatt,
Taleigao, Goa,
(through her father, Petitioner No.11).

13 PETER FIGUEIREDO,

major of age, r/o H. No. 84,
Borchem Bhatt, Caranzalem, Goa.

14. FRANCIS M. X. FIGUEIREDO,

minor of age, r/o H. No. 84,
Borchem Bhatt, Caranzalem, Goa.
(through his father, Petitioner No.13).

15. MATHIAS LOBO,

(through her father, Petitioner No. 16).

16. SHANIA LOBO,

major of age, R/o. Flat No.AT1,
Business Point Building,
Angod, Mapusa, Goa.

(through her father, Petitioner No.16)

17. VITHAL Pai,

major of age, r/o H. No. 22,
near Ganesh Temple. Khorlim,
Mapusa, Goa.

18. SHAMIK V. PAI, major of age,
r/o H. No. 22, near Ganesh Temple,
Khorlim, Mapusa, Goa.

(through his father Petitioner No. 17)

19. PATRICIA D'SOUZA,
major of age,
r/o H. No. 999, Mazal Vaddo,
Anjuna, Bardez, Goa.

20. PIYUSH HARMALKAR,
minor of age, r/o H. No. 999,
Mazal Vaddo, Anjuna, Bardez, Goa.

(through his mother, Petitioner no. 19).

..... Petitioners.

Versus

1 . STATE OF GOA Through
Chief Secretary, Government of Goa,
Secretariat, Porvorim, Bardez, Goa.

2. SECRETARY (EDUCATION),
Government of Goa, Secretariat, Porvorim,
Bardez, Goa.

3. DIRECTORATE OF EDUCATION, Government of Goa,
through its Director, Porvorim, Bardez, Goa.

4. GOA BOARD OF SECONDARY &
HIGHER SECONDARY EDUCATION,
through Chairman/Secretary,
Alto Betim, Porvorim,
Bardez, Goa.

5. UNION OF INDIA
through Home Secretary,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi – 110001.

..... Respondents.

Mr. A. F. Diniz, Senior Advocate with Mr. R. Menezes, Mr. Nigel
Fernandes and Ms. Gina Almeida, Advocates for the Petitioners.

Mr. D. Pangam, Advocate General with Ms. Maria Correia, Addl. Government Advocate for the Respondents.

Mr. P. Faldessai, Additional Solicitor General of India for Union of India.

WITH
(LD-VC-OCW-10-2020)

Dattaprasad V P. Lawande & Anr. ... Applicants/
Intervenors

In

Cedric A. Vaz & Anr. ... Petitioners

Vs

State of Goa & Ors. Respondents

Mr. Dattaprasad Lawande - Applicant present in person.

WITH
(LD-VC-OCW-17-2020)

Mr. Laxmikant S. Vaigankar & 9 Ors. ... Applicants/
Intervenors

In

Cedric A. Vaz & Anr. ... Petitioners

Vs

State of Goa & Ors. Respondents

Mr. Shivan Desai, Advocate for the Applicants/Intervenors.

WITH
(LD-VC-OCW-18-2020)

Goa State Commission for Protection
of Child Rights, through its Chairperson. ... Applicant/
Intervenor

In

Cedric A. Vaz & Anr. ... Petitioners

Vs

State of Goa & Ors. Respondents

Ms. Sushma Mandrekar, Advocate for the Applicant/Intervenor.

CORAM: M.S. SONAK, J.
Date:- 20th May, 2020.

Corrected as
per order dated

22/05/2020

IN LD-VC-10/2020 ORAL JUDGMENT

A LDVE-11/2020

Rule. With the consent and at the request of the learned counsel for the parties rule is made returnable forthwith in these petitions.

2. The challenge in both these petitions is to the decision of the State Government and the Goa Board of Secondary and Higher Secondary Education to hold the standard Xth (SSCE) examination from 21st May, 2020 onwards. There are intervention applications filed mainly to oppose the reliefs sought for in these petitions.

3. The challenges are basically two fold :-

(A) The orders dated 1st May, 2020 and 17th May, 2020 issued by the Ministry of Home Affairs (MHA) in exercise of the provisions of the Disaster Management Act, 2005, prohibit the holding of examinations during the continuance of lock-down. These orders are binding upon the State and the Board. Therefore, neither the State nor the Board have the legal authority to hold or proceed with examinations during the lock-down period;

(B) Even otherwise, taking into consideration the COVID-19 situation, the State and the Board are not justified in holding or proceeding with the SSC examination.

4. The learned counsel for the Petitioners, on demurer did submit that if at all the examinations have to proceed as per schedule, then, the State and the Board must be directed to take adequate measures to ensure that there is no compromise whatsoever on the issue of safety and well being of the students who are to answer the examinations.

5. In so far as the first ground is concerned, there can be no serious issue of the proposition that the State Government and its instrumentalities are duty bound to comply with the guidelines issued by the National Disaster Management Authority (NDMA) as are contained in the MHAs orders dated 1st May, 2020 and 17th May, 2020. This position was not even contested by the learned Advocate General appearing on behalf of the State of Goa.

6. The real issue which arose for consideration was whether the guidelines as they stand indeed prohibited the holding of examinations. On this issue, *prima facie* opinion was expressed in the order made on 15th May, 2020 that at least in so far as MHA order dated 1st May, 2020 is concerned, no prohibition as such can be spelt out. Interim relief was declined observing that the MHA order dated 1st May, 2020 had imposed a lock down only upto 18th May, 2020 and the examinations was proposed to be held beyond the then prescribed lock-down period. Cognizance was also taken of the various assurances tendered by the State and the Board on the aspect of the conduct of

examinations and the safety measures to be employed thereat.

7. The order dated 15th May, 2020 reads as follows :-

“The challenge in all these petitions is to the decision of the State Government and the Goa Board of Secondary and Higher Secondary Education to hold the standard Xth (SSCE) examination from 21st May, 2020 onwards. There is an intervention filed by Advocate Dattaprasad Lawande opposing the reliefs sought for in all these petitions.

2. *Mr. Diniz, learned Senior Advocate appearing for the Petitioners- Dr. Adwait Desai and others and Mr. R. Menezes appearing for the Petitioners-Cedric Vaz and others and other two Petitioners who appear in person referred to order dated 1st May, 2020 issued by the Union Home Secretary under the provisions of Disaster Management Act, 2005 to submit that in terms of directions issued therein, it is impermissible for the State Government or the Board to hold SSC examination during the period of lock-down.*

3. *The learned counsel pointed out that though presently the Goa is in Green zone, very recently some cases have been tested positive and therefore, the Goa is very likely to be classified in Orange zone. They point out that even in Green zone the activities of running schools, colleges, educational/training/coaching institutions is prohibited. They submit that clause 4(vi) of order dated 1st May, 2020 is required to be construed in pragmatic manner so as to prohibit the holding of examination, which might put lives and well-being of the students in grave danger. They point out that about 260 students from Maharashtra have also been permitted to answer the examination in Goa and any movement of such students is a prohibited activity in terms of clause 4(v) of the order dated 1st May, 2020.*

4. *The learned counsel and the Petitioners appearing in person point out that the State Government has not taken into consideration the plight of the students and possibility of students being affected by COVID-2019 and therefore, the decision to hold examination must be deferred until the lock-down is completely lifted. They point out that no sufficient details have been set out in the affidavits filed on behalf of the State Government and the Goa Board as to the measures which they propose to take for holding the examination. In any case, they point out that the measures are totally inadequate. For all these reasons, they submit that the decision to hold the examination with effect from 21st May, 2020 deserves to be quashed or in any case stayed.*

5. *The learned Advocate General submits that clause 4(v) or (vi) are not at all attracted to the conduct of examinations. He submits that this is not a case of regularly holding schools or colleges. He submits that there were several representations received from the students and parents for holding the examination. He submits that the SSC examination is a mile stone in the educational career of the students and it is really not possible to dispense with such examination.*

6. *The learned Advocate General referred to the reply filed on behalf of the Respondent No.4- Goa Board and Respondent No.3- Director of Education to submit that more than adequate measures have been taken for conduct of the examination. He submits that conscious decision was taken by both the State Government as well as the Goa Board to conduct the examination after having considered various view points and various inputs. He submits that this Court may therefore not interfere with the decision so taken on the basis of the apprehension expressed by some of the Petitioners.*

7. *Mr. Lawande supports the submission made by the learned Advocate General and urges that the decision for holding the examination may not be interfered.*

8. *There can be no serious issue with the proposition that the State Government and its instrumentalities are duty bound to comply with the guidelines issued by the National Disaster Management Authority (NDMA) as are contained in the order dated 1st May, 2020. Clause 4 of this order provides that certain activities will continue to remain prohibited across the country, irrespective of the zone, for a period of two weeks with effect from 4th May, 2020.*

9. *The prohibited activities referred to in sub clause (v) and (vi) of clause 4 of the order dated 1st May, 2020 read as follows :-*

“(v). Inter-State movement of individuals except for medical reasons or for activities as permitted by MHA.

(vi) All schools, colleges, educational/training/coaching institutions etc. However, online/distance learning shall be permitted.”

10. *Further, clause 9(i) of the order dated 1st May, 2020 provides that all activities are permitted in Green zones, except those activities that are prohibited under clause 4.*

11. *Thereafter, clause 10 of the order dated 1st May, 2020 provides as follows :-*

“All other activities will be permitted activities, which are not specifically prohibited/permitted with restrictions in the various Zones, under these guidelines. However, States/UTs, based on their assessment of the situation, and with the primary objective of keeping the spread of COVID-19 in check, may allow only select activities from out of the permitted activities, with such restrictions as felt

necessary.”

12. *At least, prima facie, it is not possible to accept the contentions raised by the Petitioners that one time holding of examination is an activity which is squarely covered under clause 4(vi) of the order dated 1st May, 2020. The holding of such examination is not the same thing as conduct of regular activities in schools, colleges etc.*

13. *Besides, clause 4 of the order dated 1st May, 2020 provides that certain activities will continue to remain prohibited for a period of two weeks with effect from 4th May, 2020. This period ends on 18th May, 2020. The examinations are scheduled on 21st May, 2020. Therefore, strictly speaking the holding of examination beyond 18th May, 2020, cannot be said to be in contravention of clause 4 of the order dated 1st May, 2020.*

14. *The contention about inadequacy of measures also cannot be accepted, if one has to refer to replies filed on behalf of the Respondent Nos.3 and 4 in the petition filed by Cedric Vaz and others.*

15. *In the reply filed, it is made clear that about 19680 students are to appear for the SSC examination and there will be 1612 examination halls through which these students will answer the examination. The reply states that adequate social distancing norms will be observed and hardly about 12 students will appear for examination in any one examination hall depending upon the size and location of the examination hall.*

16. *The measures which are proposed to be taken have been set out in paragraphs 10 to 22 of the reply filed by the Chairman of the Goa Board. The contents of the said paragraphs are transcribed for reference of convenience.*

“10. That in order to mitigate the difficulties that may be faced by the students during the prevalent circumstances several measures have been adopted. For instance, in the past, irrespective of the school in which the said students were studying, the students were allotted their centre of examination on the basis of nearest main centre available. Therefore, most students were placed in an exam centre which was an unfamiliar school setup. However, in light of the current situation for every school having 100 and above candidates appearing for the SSC Examination their exam centre will be the very same school of which the said candidates are students of. With respect to schools having less than 100 candidates appearing for the SSC examination, schools within the vicinity of the said school will be clubbed together for the purpose of allotting examination centres to the students.

11. That there shall be minimum 5 volunteers at each sub centre. These volunteers shall be in addition to the Deputy Conductor, Invigilators/Supervisors and ancillary staff such as peons who will otherwise be available at the examination centres.

12. That as the students will largely be appearing at the exam Centre which is their own educational institute, thereby reducing the commute to and fro from the exam centre for several students, the students will have the option of arriving at the examination hall vide their own transport or vide the buses which will be made available. Buses will be made available by the respective Schools and if required the 'Bal Rath' school buses shall be pressed into service to shuttle Students to and fro from the examination centres. Additionally, in the event that a need is felt for additional buses depending on the strength of the students, buses shall be made available to the said schools from Kadamba Transport Corporation Ltd. That there shall be an attendant in the school bus who will ensure that the students follow the norms of social distancing whilst being seated in the school bus.

13. That the students shall be brought to the exam centres in a staggered manner vide the school buses. The same is applicable also to the students who opt to arrive at the exam centre vide their own transport. That a pick up and drop point will be marked at a distance of 200 meters from the Examination centre for the students who arrive vide their own transport. That the students who arrive vide their own transportation means will thereafter be required to walk to the examination centre where they shall be guided into the examination centres by the Volunteers in an orderly fashion keeping in mind the norms of social distancing.

14. That the volunteers at the entrance of the examination centre shall provide the students with hand sanitizer and also ensure that the students are wearing adequate face masks. In the event any student arrives without a face mask the said student will be provided with a face mask by the Volunteers present.

15. That the exit from the examination centre will also be in a staggered manner in order to ensure compliance with the norms of social distancing at all points of time and in order to prevent the gathering of students in large numbers.

16. That the public at large has been put to notice that in the event any

of the students, teachers, volunteers or persons involved in the examination process exhibit any signs or symptoms of COVID -19 it is their fundamental duty towards their fellow citizens to consult a physician and only upon being satisfied with respect to their health condition participate in the examination process. Annexed hereto and marked as Exhibit A is a copy of the newspaper article as published in the 'Navhind Times' daily.

17. That students who are unable to attend the examination as they display symptoms of COVID-19 or as their test results for COVID-19 are awaited, shall be permitted to answer the supplementary examination which will be conducted one month after the declaration of the results of the primary SSC Examination.

18. That a separate centre will be made available for students who are in home quarantine, facility quarantine or hospital isolation. Further students who on the day of the examination exhibit symptoms such as sneezing or coughing will also be accommodated in a separate block in their respective examination centres. Furthermore, students coming to answer the SSC Examination from across the border shall be placed in a different sub-centre and a total of 23 such sub-centres have been identified.

19. That two days prior to the date on which the examination is scheduled the exam centres, including the furniture and the toilets as well as the buses involved for the pick-up and drop of the students will be sanitised.

20. That from amongst the volunteers three persons will be responsible to coordinate with the Primary Health Centre in the event any medical emergency arises. In any event the Respondent No. 4 seeks to include YRC/NSS candidates in the numbers of the Volunteers as they possess knowledge of first aid.

21. That the duty has been placed upon the individual sub centres to ensure that they have the requisite number of volunteers. In the event that the requisite number of volunteers cannot be procured by the school they are required to coordinate with the concerned team leader who shall make the necessary arrangements.

22. That the Respondent No. 4 has already conducted 2 orientation programmes for the Conductors of the SSC Examination. That the last programme was carried out on 10/05/2020. That the Respondent No. 4 in the said Programmes have also covered the issues pertaining to social distancing and other health and safety measures which are to be kept in mind by the Conductors and all other persons involved in the examination process. The conductors shall thereafter brief the rest of their teams and volunteers."

17. There is no reason to proceed on the basis that the Chairman of the Goa Board has not made true and correct disclosures to the Court. There is also no reason to proceed on the basis that the Goa Board as well as the State Government will not take the measures which are set out in

the reply. In any case, the directions are issued to Goa Board and the State Government to ensure that all these measures are scrupulously complied with while conducting the examination.

18. *The Director of Education has also filed reply in which, there are statements that all measures would be taken while conducting the examination for ensuring social distancing, usage of masks, sanitizers etc. for the safe conduct of the examinations. It is pointed out that the guidelines have been issued by the Board. Even the Director of Education is directed to oversee the conduct of the examination and to ensure that all safety measures are actually taken so that lives and well-being of the students is not put in any jeopardy.*

19. *As regards the movement of the students from Maharashtra is concerned, it is pointed out in the replies filed that around 200 students from the border areas, which were otherwise studying in the schools in the State of Goa will be permitted. However, it is made clear that such students will not intermingle with the other students in the State of Goa and all safety measures will be taken so that interest of neither these students nor the other students from the State of Goa is in any manner put in jeopardy.*

20. *From the material placed on record by the Respondents, it cannot be said that the decision makers have ignored the relevant considerations or have been swayed by irrelevant considerations. Ultimately, in such matters it is not always possible for the Court to interfere unless some breach of statutory provision is pointed out or a case is made out that the decision is ex-facie unreasonable and result of ignoring relevant considerations or taking into account the irrelevant considerations. From out of choices legitimately available to the executive, if conscious decision has been arrived at by the executive, being alive to various view points, pros and cons*

and then, it is not for the Court to substitute its own opinion for that of decision of the executive in such matters.

21. *There is no doubt as urged by and on behalf of the Petitioners, same element of risk always persists. However, the Petitioners, have failed to make out a case that the State Government and the Board was not at all conscious of such risk or that such decision has been made without assessment of the risk. At this stage, it is not possible to say that the State Government or the Board will not continuously assess the situation and taken suitable decision, if any need for the same actually arises in the course of the conduct of the examination.*

22. *Based upon the apprehension expressed by the Petitioners, not quite supported by any concrete material as such on record, it will not be possible to interfere with the conduct of the examinations. However, the State Government and the Goa Board will have to take all measures necessary to ensure the safety of the students as well as the personnel involved in holding of such examinations. Assurances in the replies filed by the State Government and the Goa Board are accepted as undertakings given to this Court and the directions are issued to both the State Government as well as the Goa Board to ensure that all such measures are implemented and lives and well-being of the students and the personnel to conduct the examination is not put into any serious jeopardy. Besides, the State Government as well as the Goa Board will have to continuously monitor and assess the situation at examination centres and if necessary make the suitable orders so that there is no compromise on the issue of safety and well-being of the students and personnel conducting the examination. Although, the SSC examination is a mile stone as urged by the learned Advocate General, obviously, the safety and well-being of the students, will be priority which will undoubtedly the rank over and above such*

mile stone.

23. *For all the aforesaid reasons, the interim relief is declined in these matters.*

24. *These matters be placed for consideration in the regular course.”*

8. The Petitioners, on 18th May, 2020 applied for leave to amend these petitions and also prayed for interim relief in what they described were '*changed circumstances*'.

9. Upon hearing the learned counsel on 19th May, 2020 this Court made the following order:

“Heard learned Counsel for the parties.

2. *On 15th May, 2020, an order was made declining stay on holding of the Standard Xth examination which is scheduled to commence from 21st May, 2020. Since then, the situation has changed, and changed not for the better in so far as COVID-19 situation is concerned.*

3. *Firstly, the lock-down which was to conclude by 18th May, 2020, has now been extended by the MHA order dated 17th May, 2020, upto 31st May, 2020. Secondly, when the decision was taken to hold examination on or about 6th May, 2020, Goa did not have a single COVID positive case. On 15th May, 2020, no doubt, some positive cases were detected from out of the persons entering into Goa consequent upon limited desealing of the borders. However, as of today, it is pointed out that there are at least about 31 positive cases which are being treated in the State of Goa.*

4. *The learned Advocate General stresses that only*

persons coming from out of Goa have been detected COVID-19 positive. Mr. Diniz, and Mr. Menezes, appearing for the Petitioners point out that the actual number as of today is 42. The learned Advocate General, however, states that he is not in a position to confirm this number at this point of time.

5. Suffice to note that there is a change in the circumstances and, therefore, it is not possible to simply reject the applications filed on the ground that they are in the nature of a mere review of the earlier order.

6. In any case, the 15th May, 2020 order required the State and the Board to continuously monitor the situation and take suitable decisions, depending upon how the situation develops. Under no circumstances was the State or the Board to compromise on the issues of health, safety and well-being of the students and their parents, as also the staff involved in exercise of holding of examination.

7. The learned Advocate General states that the position was reviewed and after considering the changed scenario as well, the State and the Board are of the opinion that the examination should proceed as scheduled.

8. The State and the Board are directed to file additional replies by tomorrow on this aspect. The replies may also address certain additional concerns like the issue of sanitisation as provided in the MHA order, issue of transportation arrangement and traffic plans, so as to ensure that there is no clogging of traffic at or around examination centres and breach of social distancing norms, health emergency measures, including access to availability of ambulances at the examination centres in case need therefor arises.

9. The learned Counsel for the Petitioners have

pointed out that there is some change in the phraseology of the relevant clauses of the MHA order dated 17th May, 2020 when it comes to holding of any activities in Schools and Colleges. They have also pointed out that there is an embargo on holding even academic functions which, according to them, would include examinations involving more than 50 persons.

10. The learned Advocate General has, no doubt, argued that there is absolutely no significant difference between the clauses of the earlier order and the present order of the MHA. He also submitted that the present order in fact relaxes several of the conditions included in the earlier order. He submits that had the Central Government intended to prohibit holding of examinations, then, the Central Government would have clearly stated so in the orders issued. He submits that the fact that there is no specific bar, clearly implies that no prohibition was ever intended. He reiterates that adequate measures, as indicated in the MHA orders, have in fact been taken and will be taken, so that there is no compromise on the issue of health and safety.

11. Though the Central Government has not been impleaded as party in these two Petitions, leave is granted to now implead the Central Government, as Respondent in both these Petitions. The applications for amendment, as filed, are also allowed.

12. The learned Asst. Solicitor General of India Mr. Pravin Faldessai who appears today in the Court is requested to obtain urgent instructions from the MHA as to whether any of the clauses of the MHA's order dated 17th May, 2020, prohibit even holding of the examinations in Schools and Colleges.

13. The MHA is directed to impart these instructions

to the learned Asst. Solicitor General of India at the earliest, so that the same can be placed before this Court tomorrow itself. It is emphasized that some stand, one way or the other, will have to be taken by the MHA and this Court will not appreciate any excuse that there has been some difficulty in obtaining instructions. The situation is of urgent nature and can obviously brook no delay. It is not in the interest of any one that any uncertainty lingers with the issue of holding of examination.

14. *Accordingly, these matters are posted for tomorrow at 10.00 a.m. for further consideration. If possible, the State, the Board and the MHA furnish copies of their responses by e-mail to the learned Counsel appearing for the Petitioners in these Petitions.*

15. *S.O. to 20th May, 2020 at 10.00 a.m.”*

10. In pursuance of the aforesaid, the learned Assistant Solicitor General of India Mr. P. Faldessai appeared today and has handed in copy of communication dated 20th May, 2020 addressed by the MHA to the Chief Secretary, State of Goa, on the issue of holding of SSC examinations, which is scheduled from tomorrow.

11. The communication dated 20th May, 2020 is most relevant and therefore transcribed below for convenience of reference :-

“From : JS DM MHA <jsdm@gov.in.

Subject : Request of Government of Goa seeking exemption to hold the Board Examination for Classes 10th and 12th in the State.

To : parimalrai@hotmail.com, Chief Secretary <cs-go@nic.in>

<govind.mohan@nic.in>

To

The Chief Secretary

Government of Goa

Goa

Sir,

Please refer to your DO letter dated 19th May 2020 addressed to the Union Home Secretary, seeking exemption to hold the Board Examination for Classes 10th and 12th in the State.

2. The matter has been examined in the Ministry of Home Affairs (MHA) taking into consideration the factual position mentioned in your letter that Goa does not have a single local active case of COVID infection (except of 39 positive cases of the people travelling from outside) and the onset of monsoon season during which the State will have difficulties in holding examinations.

3. After taking into account those factors and the assurance given by the State Government in the aforesaid letter of ensuring all safety precautions, such as increased number of examination centres, sanitization of the school premises, ensuring social distancing, special transport facilities etc., I am directed to convey the approval of the competent Authority in the Ministry to grant exemption from the lockdown measures to the State Government of Goa to hold the Board Examination for Classes 10th and 12th. However the exemption will be subject to the conditions that no examination centre will be permitted in the Containment Zone; wearing of face masks by teachers, staff and students; provision of thermal screening and sanitizer at the centres; and social distancing (2 gaz ki doori) in all the examination centres.

*SANJEEV KUMAR JINDAL
JOINT SECRETARY (DISASTER MANAGEMENT)*

*MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA*

12. From the reading of the communication dated 20th May, 2020, addressed by the competent authority of the Ministry of Home Affairs (MHA), at least a prima facie impression is created that in the MHA's order dated 17th May, 2020 there was indeed an embargo for conduct of examinations. That is the reason why the MHA, upon taking into consideration the peculiar position presented by the State and the Goa Board, has taken a decision to exempt the State of Goa from application of the embargo. The issue of exemption normally arises only when the situation is initially governed by an order or a notification. If, a situation is not at all governed by an order or notification, then, normally the issue of exemption does not arise. No doubt, the learned Advocate General for the State of Goa has pointed out the reply filed on behalf of Respondent No.2, in which, it is stated that the exemption was applied for as a matter of abundant caution.

13. The learned Advocate General submits that with this recent development, the issue of interpretation of MHA's orders dated 1st May, 2020 and 17th May, 2020 may be only academic. Be that as it may, even Mr. Diniz and Mr. Menezes agree that the MHA's communication dated 20th May, 2020 does make a difference and now it may not be open to the Petitioners to press their first contention any further. The learned Counsel graciously agree that in the wake of MHA's latest

communication dated 20th May, 2020, they will not be able to seriously urge that the State or the Board is nevertheless prohibited from holding examinations based upon MHA's order dated 17th May, 2020. Accordingly, considering the impact of MHA's latest communication dated 20th May, 2020 coupled with the various assurances tendered by the State and the Board in the matter of adoption of safety measures, it will not be possible for this Court to either stay or interfere with the impugned decision of holding the SSC examinations with effect from 21st May, 2020.

14. The Petitioners' second contention is substantially dealt with and considered in the order dated 15th May, 2020, which has already been transcribed above. From the material placed on record by the Respondents, it cannot be said that the decision makers have ignored the relevant considerations or have been swayed by irrelevant considerations. Ultimately, in such matters it is not always possible for the Court to interfere unless some breach of statutory provision is pointed out or a case is made out that the decision is ex-facie unreasonable and result of ignoring relevant considerations or taking into account the irrelevant considerations. From out of choices legitimately available to the executive, if conscious decision has been arrived at by the executive, being alive to various view points, pros and cons and then, it is not for the Court to substitute its own opinion for that of decision of the executive in such matters.

15. It is not the function of this Court to make a second guess or to substitute its own subjective satisfaction, whatever it may be, for the subjective satisfaction of those that are primarily enjoined by law to take such decision. In the exercise of this solemn jurisdiction, this Court, will neither shirk nor overstep. The personal opinion upon the issues at hand, are quite irrelevant and the Court will always endeavour to see that such personal opinions do not seep into the judicial decision making.

16. There is no doubt, as urged by and on behalf of the petitioners, some element of risk involved in the exercise. However, the learned Advocate General has repeatedly submitted that both the State as well as the Board are conscious of such risks and the decision has been made by assessing such risk. The Advocate General reiterated that this decision has been taken after taking into account several relevant considerations including the impact on the mental health of the students on account of indefinite postponement of examinations. The learned Advocate General pointed out that there was a demand from students, parents academics, as well as bodies representing the teachers, headmasters, etc. that such examination be held at the earliest opportune moment, so that the agony of the students is not prolonged any further.

17. The learned Advocate general to the specific query of the Court, as to whether the State and the Board have revisited its

decision, in the wake of increased COVID-19 positive cases and the extension of lock-down by the MHA answered that the decision was indeed revisited and even in the context of the changed scenario, a conscious decision is taken to proceed with the examinations as scheduled. It is trite that the making of such decisions carry with them the responsibility of standing by the consequences of such decisions.

18. Since, the Petitioners have not been able to place sufficient material on record to suggest that such decision is vitiated by the failure to take into account relevant considerations or that such decision is impacted by entirely irrelevant considerations, it is, not possible for this Court to interfere with such decision. In *Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation*, [1948] 1 KB 223, the House of Lords has spelt out yet another ground for judicial review. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. Certainly, the Petitioners have failed to make out any case attracting this exacting standard of judicial review. The petitioners, were in fact relying upon the orders made by the MHA and now that the MHA has issued an exemption, the petitioners through their learned counsel did not press the matter any further.

19. Quite apart from the administrative law issue of the extent to which constitutional Courts can interfere with executive action, in a

democratic set up, the decision whether to hold an examination in these circumstances or not may be a debatable one. However, the issue of safety and adoption of adequate measures in the conduct of such examinations, is absolutely a non-debatable issue. There can be no gainsaying that the State and the Board is duty bound to take adequate measures to ensure that the safety and the health of the students as well as all others who are involved in this examination process, is not put to any jeopardy. The State and the Board will have to continuously monitor and assess the situation and take appropriate decisions, commensurate to the occasion.

20. The learned Advocate General may be quite right in his submission that it is always not possible to anticipate all eventualities and make provisions in advance. However, it is the duty of both the State and the Board to anticipate reasonably foreseeable eventualities and take adequate measures applying the precautionary principle. There is no scope for any undue complacency in the situation in which we presently find ourselves. The experience gained from the sudden spurt in COVID-19 positive cases cannot be ignored but rather, must be the basis for taking further measures at prevention and mitigation. It is therefore made clear that there should be no compromises on the issues of health and safety of the students and the primary focus must be on these aspects. Although the SSC examination is a milestone as urged by the Advocate General, obviously, the safety and well-being of the students will be a priority which will undoubtedly rank over and

above such milestone. There is a real distinction between a *milestone* and a *millstone*, which, none can afford to forget at this juncture. In fact, in figurative terms, Oxford Advanced Learner's Dictionary defines the '*millstone*' as a difficult problem or responsibility that it seems impossible to solve or get rid of.

21. Several directions were issued on the aspect of safeguards to be employed in the course of conduct of examinations in the previous order dated 15th May, 2020. Such directions are not repeated, but are hereby reiterated. Again, it is made clear that the aspect of safety and well-being of the students and the personnel involved in the examination process will brook of no unnecessary compromises or adjustments.

22. In the reply filed by the Board today, further assurance is given to this Court that all measures relating to sanitization will be duly adopted. The Board has stated that the sanitization of the exam centres includes not only the furniture and the toilets of the exam centres, but also of the railings, door, door knobs/handles and all other surfaces that the students and the personnel who are involved in the examination process would ordinarily come in contact with. The Board has also assured this Court that the Examination Centres will be thoroughly sanitized and handwash/soap will be made available at the toilets of each of the sub-centres.

23. The Board, in the context of access to medical care and emergencies, in paragraph 6 of its reply, has stated the following :

“6. That there are 13 Primary Health Centres with Hospitals, 10 Primary Health Centres without Hospitals (i.e. with no inpatient facility), 6 Community Health Centres, 2 District Hospitals and 2 Sub-District Hospitals in the State of Goa. That the 108 ambulances are stationed at several locations across the State of Goa. That on a daily basis 38 ambulances are stationed at several locations across the State of Goa. Additionally, there are 35 motorcycle ambulances stationed across the State. That the Respondent No. 4 has addressed a letter dated 11/05/2020 to the Directorate of Health services intimating them about the conduct of the examinations in the State of Goa from 21/05/2020, particularly in light of the ongoing COVID-19 outbreak, and requesting therein to provide medical assistance. That the medical staff at the aforementioned Health care Establishments across the State have been put to notice of the SSC examinations to be conducted in the State of Goa. That the contact details of the Health Officers from the respective Primary Health Centres with Hospitals, Primary Centres without Hospital, Community Health Centres, Sub District Hospitals and the District Hospitals have been made available to the Conductors and Deputy Conductors of the Examination. In the event of any medical emergency the nearest Health care Establishment will be contacted immediately for assistance. That each sub-centre is linked with a Health Care Facility.”

24. On the aspect of travel arrangements, the Board has given some assurances in paragraphs 7 and 8 of its reply.

25. The various statements made by and on behalf of the Board in its reply filed today are accepted as undertakings to this Court. The

Board is directed to take all steps to comply with its assurances, both in letter and spirit, keeping in mind always that the paramount consideration in this entire exercise is the need to balance the academic interest of the students with the vital issues of their safety and well-being amidst this COVID-19 crisis.

26. The State Government has also filed a detailed response today. The State Government has reiterated its resolve to take all measures necessary for the safety of the students and the personnel in the examination exercise. The measures in relation to medical assistance and the traffic management have also been set out in the said reply. All assurances contained in such reply are accepted as undertakings to this Court and the State and its Agencies are directed to implement these measures in letter and spirit.

27. Mr. Diniz and Mr. Menezes express certain additional concerns across the Bar. In response to the same, the learned Advocate General, has made a statement that thermal screening will be carried out at every sub-centre and all measures to ensure social distancing will be strictly complied with. In fact the MHA's latest communication dated 20th May, 2020 requires the use of such thermal guns at all the examination sub-centres. Insofar as the issue of traffic arrangements is concerned, the learned Advocate General made a statement that at every sub-centre the State will ensure that there is at least one police constable available to oversee such arrangements. This Court feels that

in case any additional personnel are necessary at some selected sub-centres, the State will take necessary measures in that regard so that there is least inconvenience to not only the students and their parents, but also the members of public on account of clogging of the roads, etc.

28. Learned Advocate General has also pointed out that the State Government has now taken a decision that 200 or so students from outside the State of Goa will answer the SSC examinations in sub-centres situated outside the State of Goa in the border areas. This means that there will be no issue of these students now entering into Goa for the purpose of answering examinations. The learned Advocate General has stated that in fact even the personnel for the conduct of these examinations are from the States of Karnataka and Maharashtra itself. This, to a substantial extent, takes care of the additional concerns expressed by the learned Counsel for the Petitioners.

29. In view of the aforesaid, no useful purpose will be served by letting these petitions to pend in this Court. However, it is once again made clear that the State and the Board, in holding these examinations, will strictly comply with all the assurances and undertakings given by them to this Court so that, the issue of health, safety and well-being of the students and the personnel involved in this exercise of holding examinations, is not in any manner compromised. Further, it is made clear that the State and the Board should continuously monitor the situation and take suitable decisions depending upon how the situation

develops on day-to-day basis.

30. With the aforesaid directions, these Petitions are disposed of. The intervention petitions, which were mostly by parties who were opposing the grant of any reliefs to the Petitioners in these Petitions are also disposed of. The miscellaneous applications for interim reliefs filed by the Petitioners in these Petitions are also disposed of.

31. This Court, records the extremely reasonable approach adopted by the Petitioners and their learned Counsel, as also by the learned Advocate General, the Assistant Solicitor General of India and other learned Counsel appearing in these matters.

32. All concerned to act on the basis of an authenticated copy of this order.

M.S. SONAK, J